IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	Cr. ID No. 1703005932
Plaintiff,	)	
	)	
v.	)	
	)	
CHARLES L. RILEY,	)	
	)	
Defendant.	)	

Submitted: May 26, 2020
Decided: August 14, 2020

COMMISSIONER'S REPORT AND RECOMMENDATION THAT DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF SHOULD BE DENIED.

Rebecca Song, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Charles L. Riley, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se.*

PARKER, Commissioner

This 14th day of August 2020, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND, FACTS AND PROCEDURAL HISTORY

1. In April 2017, Defendant Charles L. Riley was charged in a fourteen-count indictment with multiple drug and weapons-related charges.

2. Riley was on Level II probation on March 8, 2017 and was required to permit probation/parole officers to enter his home as a condition of the probation. During the first week of March 2017, Probation Officer Collins received information that Riley was selling drugs at his residence and that he possessed a handgun.[1]

3. On the evening of March 8th, Operation Safe Streets, including Officer Collins, was on proactive mobile patrol in the eastern part of Wilmington. Officer Collins saw Riley standing in front of his residence and relayed to Safe Streets that he wished to conduct a probation home visit.[2]

4. Riley saw the officers drive past him and immediately ducked into his residence. Officer Collins knocked on the door, announced himself as probation and asked Riley to come to the door having just seen him go into the residence. Adjacent to the front door was an open window. Officer Collins saw Riley through the front

[1] Affidavit of Probable Cause attached as Exhibit B to Superior Court Docket No. 1.
[2] Affidavit of Probable Cause attached as Exhibit B to Superior Court Docket No. 1.

window, they made eye contact, but Riley disregarded Collins' instruction to come to the door.[3]

5. Officer Collins believed that Riley was evading probation and concealing or destroying illegal contraband. Officer Collins made the decision to force entry into the residence. Upon doing so, Riley was found with a bag of cocaine and $886 in his possession. After an administrative search, the officers found a loaded handgun, a large amount of crack cocaine, heroin, marijuana, and drug paraphernalia.[4]

6. Following Riley's indictment on the multiple drug and weapons-related charges, he filed a motion to suppress. On August 21, 2017, a hearing was held on the suppression motion. Following the hearing, supplemental briefing was ordered. On January 16, 2018, the Superior Court denied Riley's suppression motion.[5]

7. Riley was represented by Joseph W. Benson, Esquire. After the denial of the suppression motion, Riley became dissatisfied with Mr. Benson's representation. As a result, Mr. Benson filed a motion to withdraw.[6] A hearing was held on Mr. Benson's motion to withdraw. Riley did not oppose the motion. The motion was granted by Order dated February 9, 2018.[7] Thereafter, James O. Turner, Jr., Esquire from the Office of Defense Services replaced Mr. Benson as Riley's defense counsel.

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[3] Affidavit of Probable Cause attached as Exhibit B to Superior Court Docket No. 1; September 26, 2018 Sentencing Transcript, at pgs. 6-7.
[4] Affidavit of Probable Cause attached as Exhibit B to Superior Court Docket No. 1.
[5] Superior Court Docket No.29.
[6] Superior Court Docket No. 31.
[7] Superior Court Docket No. 35.

8. On July 30, 2018, Riley pled guilty to three of the fourteen counts of the indictment. He pled guilty to: 1) Drug Dealing (Cocaine, Tier 4), 2) Aggravated Possession (Heroin, Tier 1), and 3) Possession of a Firearm by a Person Prohibited ("PFBPP"). All the remaining charges of the indictment were dismissed as part of the plea.

9. As part of the plea agreement, Riley agreed that he was a habitual offender and would sentenced as a habitual offender on the charges of Drug Dealing Cocaine and PFBPP, and that he would be subjected to a 17-year minimum/mandatory unsuspended prison sentence as a habitual offender on those charges. The State agreed to recommend the 17-year minimum/mandatory unsuspended prison sentence on those charges and agreed to seek suspended jail sentences on the other charge comprising the plea agreement.

10. On September 26, 2018, following a pre-sentence investigation, the Superior Court accepted the agreed upon sentence recommendation and sentenced Riley as a habitual offender to a total of seventeen years of unsuspended Level V time, the minimum/mandatory sentence. Riley was sentenced to the minimum/mandatory sentence for PFBPP as a habitual offender under 11 *Del. C.* § 4214(c), to fifteen years at Level V incarceration. On the drug dealing charge, Riley was sentenced as a habitual offender under 11 *Del. C.* § 4214(a), to fifteen years at Level V incarceration, suspended after two years for eighteen months of Level III probation.

On the Aggravated Possession charge, Riley was sentenced to fifteen years at Level IV DOC discretion, suspended after six months at Level IV for eighteen months at Level III probation.

11. On direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court.[8] The Delaware Supreme Court noted that Riley's sentence was consistent with the sentencing recommendation made in connection with the guilty plea.[9]

RILEY'S RULE 61 MOTION

12. Riley filed the subject Rule 61 motion on November 22, 2019. In the subject motion, Riley raises eight ineffective assistance of counsel claims. Riley appears to raise an additional issue in his reply brief.

13. Riley also filed a motion for the appointment of counsel. By Order dated February 3, 2020, Riley's motion for the appointment of counsel was denied. [10]

14. In this Rule 61 motion, the record was enlarged and Riley's trial counsel, Mr. Benson who was subsequently replaced by Mr. Turner, were both directed to submit Affidavits responding to Riley's ineffective assistance of counsel claims. Thereafter, the State filed a response to the motion and Riley filed a reply thereto.[11]

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[8] *Riley v. State,* 2019 WL 1354410 (Del.).
[9] *Riley v. State,* 2019 WL 1354410, *1 (Del.).
[10] Superior Court Docket No. 57.
[11] Super.Ct.Crim.R. 61(f) and 61(g).

15. For the reasons set forth below, the claims raised in Riley's Rule 61 motion were waived upon the entry of his plea and are also without merit.

Riley's Claims Were Waived Upon the Entry of His Plea

16. A defendant is bound by his answers on the guilty plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.[12] In the subject action, the Truth-in-Sentencing Guilty Plea Form, Plea Agreement and plea colloquy reveal that Riley knowingly, voluntarily and intelligently entered a guilty plea to three of the fourteen counts of the indictment.

17. At the time of the plea, Riley represented that he understood he would be sentenced as a habitual offender to two of the three charges included in the plea, the drug dealing cocaine and PFBPP charges, and that he was facing the imposition of a 17-year minimum mandatory unsuspended prison term.[13]

18. It is important to note that Riley derived a significant benefit from pleading guilty to just three counts of the indictment since he was facing a number of additional drug and firearm charges, for which he was also eligible to sentenced as a habitual offender if convicted, and was facing significantly more jail time if convicted of all the charges in the indictment.

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[12] *State v. Harden,* 1998 WL 735879, *5 (Del. Super.); *State v. Stuart,* 2008 WL 4868658, *3 (Del. Super. 2008).

[13] July 30, 2018 Plea Transcript, at pgs. 3-10, 14-16.

19. At the time of the plea, Riley represented that he had reviewed the plea agreement and Truth-in-Sentencing Guilty Plea Form with counsel, that they discussed all questions, issues and concerns, and that all issues were addressed to his satisfaction.[14] Riley represented that nobody was forcing him to enter his plea.[15] Riley represented that he was freely and voluntarily pleading guilty to the charges comprising the plea agreement. Riley represented that he was not being threatened or forced to do so by his attorney, by the State, or by anyone else.[16]

20. During the plea colloquy and in the Truth-in-Sentencing Guilty Plea Form, Riley represented the he understood he was waiving all of his constitutional rights associated with taking a plea, including the right to be presumed innocent until the State proves each and every part of the charges against him beyond a reasonable doubt; to hear and question the witnesses against him; to present evidence in his defense; to testify or not testify; and to appeal, if convicted.[17]

21. At the plea hearing, Riley admitted his guilt to the three charges comprising the plea agreement.[18]

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[14] July 30, 2018 Plea Transcript, at pg. 10, 16; Truth-in-Sentencing Guilty Plea Form dated July 30, 2018.
[15] July 30, 2018 Plea Transcript, at pg. 10; Truth-in-Sentencing Guilty Plea Form dated July 30, 2018.
[16] July 30, 2018 Plea Transcript, at pg. 10; Truth-in-Sentencing Guilty Plea Form dated July 30, 2018.
[17] July 30, 2018 Plea Transcript, at pg. 11; Truth-in-Sentencing Guilty Plea Form dated July 30, 2018.
[18] July 30, 2018 Plea Transcript, at pgs. 12-13.

22. Riley represented that he was satisfied with his counsel's representation, that his counsel fully advised him of his rights, and that he understood the consequences of entering into his guilty plea.[19]

23. As confirmed by the plea colloquy, Plea Agreement and Truth-in-Sentencing Guilty Plea Form, Riley entered his plea knowingly, intelligently and voluntarily. Riley has not presented any clear, contrary evidence to call into question his testimony at the plea colloquy, Plea Agreement or answers on the Truth-in-Sentencing Guilty Plea Form.

24. Riley's valid guilty plea waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.[20] Riley's valid guilty plea waived any right to test the strength of the State's evidence, the right to hear and question witnesses, the right to present evidence in his own defense, and the right to appeal, if convicted.

25. All of Riley's claims presented herein stem from allegations of defects, errors, misconduct and deficiencies that existed at the time of the entry of the plea. All of Riley's claims presented herein were waived when he knowingly, freely and intelligently entered his plea.[21]

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[19] July 30, 2018 Plea Transcript, at pgs. 16-17; Truth-in-Sentencing Guilty Plea Form dated July 30, 2018.

[20] *Somerville v. State,* 703 A.2d 629, 632 (Del. 1997); *Modjica v. State,* 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

[21] See, *Mills v. State,* 2016 WL 97494, at *3 (Del.).

Riley's Claims Are Without Merit

26. In addition to Riley's claims having been waived upon the entry of his guilty plea, they are also without merit.

27. In order to prevail on an ineffective assistance of counsel claim, the defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.[22] The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.[23]

28. In the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.[24] Mere allegations of ineffectiveness will not suffice;

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[22] *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).
[23] *Id.* at 687-88, 694.
[24] *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Somerville v. State,* 703 A.2d 629, 631 (Del. 1997); *Premo v. Moore,* 131 S.Ct. 733, 739-744 (2011).

instead, a defendant must make and substantiate concrete allegations of actual prejudice.[25]

29. The United States Supreme Court has reiterated the high bar that must be surmounted to prevail on an ineffective assistance of counsel claim.[26] The United States Supreme Court cautioned that in reviewing ineffective assistance of counsel claims in the context of a plea bargain, the court must be mindful of the fact that "[p]lea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks."[27]

30. In this case, the plea deal was the result of complex negotiations. Riley had not prevailed on his suppression motion and was facing sentencing as a habitual offender on a number of drug and firearms charges if convicted at trial. The 17-year minimum-mandatory recommended prison sentence was an agreement that was heavily negotiated. If Riley was found guilty at trial, he was facing substantially more mandatory prison time.[28]

31. Riley could have elected to proceed to trial. He could have tested the State's case, cross-examined the State's witnesses, and called his own witnesses to testify.

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[25] *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).
[26] *Premo v. Moore,* 131 S.Ct. 733, 739-744 (2011).
[27] *Id.*, at pg. 741.
[28] September 26, 2018 Sentencing Transcript, at pgs. 8-9.

However, Riley, a probationer, was found in his residence with a loaded weapon and large amounts of cocaine. The case against him appears to be overwhelming. Had he proceeded to trial and lost, he could be serving a life sentence. In balancing the risks and benefits, Riley opted instead to accept the "heavily negotiated" plea deal, agreed to allow the State to have him declared a habitual offender, and agreed to the State's recommendation of a 17-year minimum/mandatory prison sentence.

32. Riley's plea represented a rational choice given the pending charges, the evidence against him, and the possible sentences he was facing if convicted at trial.

33. In Claim One, Riley claims that counsel was ineffective for failing to interview and subpoena all available alibi witnesses. In Claim Three, Riley claims that counsel was ineffective for failing to call available witnesses at the suppression hearing. In Claim Six, Riley claims that counsel was ineffective for failing to use the witnesses that Riley wanted at the suppression hearing.

34. Riley's trial counsel, Mr. Benson, represented in his Affidavit in response to Riley's Rule 61 motion, that he had interviewed a potential witness that Riley identified would be helpful to the suppression hearing. Upon interviewing the witness, Mr. Benson determined that there were serious credibility issues with the potential witness and that the witness' testimony would not be helpful and would

even be potentially harmful. Mr. Benson advised Riley of his decision before the hearing.[29]

35. The decision as to whether or not to call a witness and how to examine and/or cross-examine witnesses who are called are tactical decisions.[30] Great weight and deference are given to tactical decisions by the trial attorney. There is a strong presumption that defense counsel's conduct constituted sound trial strategy.[31]

36. Mr. Turner, Riley's replacement trial counsel after Mr. Benson withdrew, represented that he not aware of the existence of any alibi witnesses in this case nor was he aware that Riley brought any such witnesses to his attention.[32]

37. Moreover, Riley does not specifically state what witnesses should have been called, the content of their expected testimony, and how they would have helped his case. Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.[33] These claims of ineffective assistance of counsel are without merit.

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[29] Superior Court Docket No. 59- Affidavit of Joseph W. Benson, Esquire, in response to Riley's Rule 61 motion.
[30] *Outten v. State,* 720 A.2d 547, 557 (Del. 1998).
[31] *Strickland v. Washington,* 466 U.S. 668, 689 (1984); *Harrington v. Richter,* 131 S.Ct. 770 (2011).
[32] Superior Court Docket No. 60 Affidavit of James O. Turner, Jr., Esquire, in response to Riley's Rule 61 motion.
[33] *Younger v. State,* 580 A.2d 552, 556 (Del. 1990); *State v. Brown,* 2004 WL 74506, *2 (Del.Super. 2004) (conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).

38. Turning next to Claim Four, Riley asserts that Mr. Benson provided ineffective assistance because he failed to vigorously pursue the suppression issues and then withdrew "at a critical juncture."

39. The record belies Riley's claim. The record reflects that Mr. Benson, in fact, did vigorously pursue the suppression issues.[34] Although Riley is disappointed with the outcome of the suppression motion, it was not due to Mr. Benson's lack of effort. After Riley's suppression motion was denied, Mr. Benson withdrew as counsel because Riley became dissatisfied with his representation. Riley made it clear that he wanted Mr. Benson to withdraw and so he did. Riley was thereafter provided with replacement counsel.

40. Riley represented at the plea colloquy and in his plea paperwork that he was satisfied with his replacement counsel's representation of him. Riley has failed to show that counsel was deficient in any respect or that he has suffered any actual prejudice therefrom. This ineffective assistance of counsel claim must fail.

41. In Claim Two, Riley asserts that counsel violated the attorney-client privilege. In Claim Five, Riley asserts that counsel disclosed confidential information to unknown persons about the suppression hearing without Riley's informed consent.

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[34] See, Superior Court Docket No. 10- Motion to Suppress; August 21, 2017 Transcript of Motion to Suppress; Superior Court Docket No. 28- Defendant's Supplemental Memorandum in Support of Motion to Suppress; Superior Court Docket No. 59- Affidavit of Joseph W. Benson, Esquire, in response to Riley's Rule 61 motion.

Riley also asserts that counsel allowed his secretary to give confidential information to an unknown person about Riley. In Claim Seven, Riley also asserts that counsel did not preserve the confidentiality of information. Claim Eight appears to assert that the confidentiality was breached at sentencing "that likely affected the outcome of the sentencing proceeding."

42. Riley fails to specify what information had been exposed, in what manner, and when such information was exposed. Riley has also failed to specify how he suffered actual prejudice as a result thereof. Again, conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.[35]

43. Mr. Benson represents that the discussions with his office staff that Riley is referring to did not take place with an "unknown person." The conversations took place with Dwayne White, a life-long friend of Riley's who was paying his fees for Mr. Benson's representation. Riley knew that Mr. Benson and his staff were communicating with Mr. White about Riley's case and Riley gave them permission to do so. Nothing communicated to Mr. White, with Mr. Riley's knowledge and consent, contained any confidential information. Mr. Benson further represents that

[35] *Younger v. State,* 580 A.2d 552, 556 (Del. 1990); *State v. Brown,* 2004 WL 74506, *2 (Del.Super. 2004) (conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).

there was nothing communicated to Mr. White, again with Mr. Riley's knowledge and consent, that could have in any way placed Riley and his wife in danger.[36]

44. Mr. Turner represented Riley at sentencing and is unable to respond to the general allegation of a breach of confidentiality since no specifics were provided.[37] Riley was sentenced in accordance with his agreed upon recommendation of 17-years of unsuspended prison. He received the sentence that the State agreed to recommend. He has failed to establish how he suffered any prejudice whatsoever at sentencing when his sentence was consistent with the sentencing recommendation made in connection with his plea agreement.

45. Riley has failed to make any concrete allegations of actual prejudice and substantiate them. Riley has failed to meet his burden to establish that trial counsels' conduct was deficient in any regard and he has failed to establish actual prejudice as a result of any alleged deficiency. Riley's ineffective assistance of counsel claims are without merit.

46. Riley appears to raise an additional claim in his reply brief. He appears to contend that the State breached the plea agreement by declaring him an habitual

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[36] Superior Court Docket No. 59- Affidavit of Joseph W. Benson, Esquire, in response to Riley's Rule 61 motion.

[37] Superior Court Docket No. 60 Affidavit of James O. Turner, Jr., Esquire, in response to Riley's Rule 61 motion.

offender, after he accepted a non-habitual plea agreement. Riley is simply incorrect in this regard.

47. The plea agreement clearly and expressly provided that Riley was to be declared a habitual offender and sentenced as a habitual offender.[38]

48. The plea agreement expressly provided: STATE AND DEFENDANT AGREE TO THE FOLLOWING: The defendant agrees he is a Habitual Offender and therefore subject to sentencing pursuant to 11 Del.C. 4214(a). . . §4214(c) and §4214(d) due to the following prior convictions. . ."[39]

49. During the plea colloquy, the State represented to the Superior Court that the terms of the plea agreement provided that Riley was to be declared a habitual offender on the drug dealing cocaine and PFBPP charges, and that the State will be recommending a 17-year minimum/mandatory unsuspended Level V sentence as a result thereof.[40]

50. At the plea colloquy, Riley expressly confirmed that he understood that the State would be seeking to declare him a habitual offender and that the State would be recommending that he be sentenced as a habitual offender to the minimum/

[38] July 30, 2018 Plea Agreement.
[39] July 30, 2018 Plea Agreement.
[40] July 30, 2018 Plea Transcript, at pgs. 3-4.

mandatory sentence of 17-years unsuspended prison time.[41] At sentencing, Riley received his bargained-for sentence of 17-years unsuspended prison time.

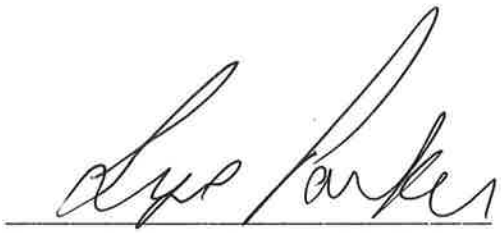
51. Riley's claim that he did not agree to be sentenced as a habitual offender is directly at odds with the record and is wholly without merit.

52. Riley has not established that his counsel was deficient in any respect or that he has suffered any actual prejudice therefrom. His ineffective assistance of counsel claims must fail.

53. Riley's claims raised herein were waived when Riley voluntarily entered into his guilty plea. The claims are also without merit.

For all of the foregoing reasons, Riley's Motion for Postconviction Relief should be DENIED.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary
Joseph W. Benson, Esquire
James O. Turner, Jr., Esquire

[41] July 30, 2018 Plea Transcript, at pgs. 14-16.